

§ 93.160

(4) Any year for which the applicable SIP specifies an emissions budget.

[58 FR 63253, Nov. 30, 1993, as amended at 75 FR 17277, Apr. 5, 2010]

§ 93.160 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 93.156 and the public participation requirements of § 93.157.

(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(g) After a State or Tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State or tribal and federally enforceable. Enforceability through the appli-

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cable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

[58 FR 63253, Nov. 30, 1993, as amended at 75 FR 17277, Apr. 5, 2010]

§ 93.161 Conformity evaluation for Federal installations with facility-wide emission budgets.

(a) The State, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in cooperation with Federal agencies or third parties authorized by the agency that operate installations subject to Federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under § 93.158(a)(1). The facility-wide budget must meet the following criteria:

(1) Be for a set time period;

(2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

(3) Include specific quantities allowed to be emitted on an annual or seasonal basis;

(4) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

(5) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the Federal agency is taking an action that would otherwise require a conformity determination;

(6) Be submitted to EPA as a SIP revision;

(7) The SIP revision must be approved by EPA.

(b) The facility-wide budget developed and adopted in accordance with paragraph (a) of this section can be revised by following the requirements in paragraph (a) of this section.

(c) Total direct and indirect emissions from Federal actions in conjunction with all other emissions subject to General Conformity from the facility that do not exceed the facility budget adopted pursuant to paragraph (a) of this section are “presumed to conform” to the SIP and do not require a conformity analysis.